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OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85378952
LAW OFFICE ASSIGNED	LAW OFFICE 115
MARK SECTION (no change)	
ARGUMENT(S)	

In response to the Final Office Action dated January 20, 2012, please consider the following remarks in support of registration.

I. Likelihood of Confusion

A. There Is No Likelihood Of Confusion Because The Goods/Services Are Different

When considering whether a likelihood of confusion exists, the Examining Attorney is limited to determining relatedness in respect to the goods/services as identified in the registration. See United Drug v. Rectanus, 248 U.S. 90, 97 (Sup. Ct. 1918); University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 217 U.S.P.Q. 505, 507 (Fed. Cir. 1983) holding that "rights in gross . . . is contrary to principles of Trademark law." Thus, this general Trademark principle grants a Trademark owner protection only in relation to the identified goods. The Registrant's goods are limited solely to "video game controllers." The Applicant's services are limited to online gaming and related services, and not video games, let alone hardware components for a video game console system. The Applicant maintains its position that the present services are not similar to the goods of the Registrant.

The Examining Attorney stated in the Final Office Action on page 3 that Applicant relies "on limitations not present in the identifications to differentiate the goods and services." As such, the Applicant has amended the description of services to clarify that the services are all related to online gaming and not video game console accessories or games. In view of the amendment, the Applicant respectfully submits that it may properly rely on the arguments. Instead of repeating those arguments in this response, the Applicant incorporates those arguments herein by this reference.

Rather than semantic generalization of the products, it is consumer perception that is significant for determining product relatedness. See, e.g., Electronic Data Systems Corp. v. EDSA Micro Corp., 23 U.S.P.Q.2d 1460, 1463 (T.T.A.B. 1992) ("[T]he issue of whether or not two products are related does not revolve around the question of whether a term can be

used that describes them both, or whether both can be classified under the same general category"); UMC Industries, Inc. v. UMC Electronics Co., 207 U.S.P.Q. 861, 879 (T.T.A.B. 1980) ("the fact that one term, such as 'electronic,' may be found which generally describes the goods of both parties is manifestly insufficient to establish that the goods are related in any meaningful way"); Harvey Hubbell, Inc. v. Tokyo Seimitsu Co., 188 U.S.P.Q. 517, 520 (T.T.A.B. 1975) ("In determining whether products are identical or similar, the inquiry should be whether they appeal to the same market, not whether they resemble each other physically or whether a word can be found to describe the goods of the parties").

The fact that the Applicant's services and the Registrant's product can be categorized in the same broad "field" involving gaming does not, of itself, provide a basis for regarding the products or services as "related." See In re Digirad Corp., 45 U.S.P.Q.2d 1841 (Comr Pats 1998) (holding that despite some industry "overlap," DIGIRAY and DIGIRAD are not confusingly similar for highâ€'tech medical diagnostic apparatus used to different ends); Cooper Industries, Inc. v. Repcoparts USA, Inc., 218 USPQ 81, 84 (T.T.A.B. 1983) ("the mere fact that the products involved in this case (or any products with significant differences in character) are sold in the same industry does not of itself provide an adequate basis to find the required 'relatedness' ").

When a cited registration describes goods broadly, such as without limitation as to the specific nature or type, the Examining Attorney may presume that the goods encompass a broad spectrum. See In re Thor Tech., Inc., 90 U.S.P.Q.2d 1634, 1638 (T.T.A.B. 2009). However, the Registrant has claimed a very narrow set of goods – video game controllers.

Here, the Applicant uses the mark for its online computer games and gaming, while the Registrant has registered its mark solely for video game controllers. As set forth in the prior response, the Registrant uses its mark solely for video game controllers only in connection with *Wii* console devices as evidenced by Exhibits A and B in the prior response. Registrant's website demonstrates that its video game controller is for use with solely with Nintendo's *Wii* video game console and in place of Nintendo's regular "Nunchuk" controller (although incompatible with a few Nunchuk capable video games). See http://www.nyko.com/customer-support/product-support.html?platform=Wii&name=Kama. While the Registrant's goods are claimed only with respect to video games, the Applicant's services do not involve video games, video game consoles or any accessories related thereto.

A video game is distinguishable from computer games and even more so from online computer games. Simply because they can be argued to be related to the same general industry of gaming does not provide that such goods/services are similar for the likelihood of confusion analysis. See, e.g., In re Digirad Corp., 45 U.S.P.Q.2d 1841; Cooper Industries, Inc., 218 U.S.P.Q. at 84. Computer games require different equipment with different connectivity than those required by video games. Computer games, especially online computer games, also provide a much different array of features and functions than those provided by video games. With the growing popularity of the Internet and related tools, such as Bluetooth, computer games now provide an entirely different world of interactivity than that which can be achieved through video games. This difference between video games and related accessories and computer online games is supported by consumer perception. See, e.g., Electronic Data Systems Corp., 23 USPQ2d at 1463; see also Exhibit D in prior response.

Even where the marks are identical, which is not the case here, and the products or services can be marketed to the same customers, which is also not the case, sufficient differences

between the products or services negate a likelihood of confusion. Local Trademarks Inc. v. The Handy Boys Inc., 16 U.S.P.Q.2d 1156 (T.T.A.B. 1990) (holding no confusion between LITTLE PLUMBER for liquid drain opener and identical mark LITTLE PLUMBER for advertising services though both products were marketed to plumbing contractors). For example, in McGraw-Hill Inc. v. Comstock Partners Inc., 743 F.Supp. 1029, 1034 (S.D.N.Y. 1990), COMSTOCK for computer network for providing "real time" stock quotes was held not likely to be confused with COMSTOCK for money management of large investment portfolios, and the mere fact that the products sold under both marks were "related to the broad field of finance" was held insufficient to demonstrate that the products are related.

As evident from the description of services, Applicant's services focus on gaming and the online environment to serve a much different purpose and consumer than the goods of the cited mark. Thus, the cited mark is used in connection with goods that have significant differences in character than the services of the Applicant's mark, and do not provide an adequate basis to find the required 'relatedness.'

In view of the above, the marks are directed to the Registrant's goods and the Applicant's services that are sufficiently different to avoid a likelihood of confusion.

B. There Is No Likelihood Of Confusion Because the Registrant's Goods and the Applicant's Services Are Directed to Different Target Markets/Trade Channels And Because the Consumers Are Sophisticated

In analyzing likelihood of confusion, the relevant confusion must be in the minds of the purchasers or potential purchasers of the parties' products. Electronic Design & Sales, Inc. v. Electronic Data Sys. Corp., 21 U.S.P.Q.2d 1388, 1390 (Fed. Cir. 1992). "The ultimate inquiry, regardless of the nature of the involved marks, is whether "relevant persons" are likely to be confused." In re Code Consultants Inc., 60 U.S.P.Q.2d 1699 (T.T.A.B. 2001). As discussed above, the difference between video games and their controllers on the one hand and computer online games on the other is supported by consumer perception. See, e.g., Electronic Data Systems Corp., 23 USPQ2d at 1463; see also Exhibit D in prior response.

Not only are the Registrant's goods and the Applicant's services unrelated, the evidence of record clearly demonstrates that the Registrant's goods and the Applicant's services are offered in different channels of trade. The Registrant's goods are specifically limited to video game controllers. This reflects a highly specialized product that is sold in limited channels of trade to a very limited type of consumer (video game console owner or user). This highly specialized product is exceedingly different than the services offered by the Applicant.

While copies of use-based, third party registrations can be used to suggest that goods and/or services are of a certain type which may originate from a single source, the Examining Attorney has not provided any such third party, use-based registrations. In re Albert Trostel & Sons Co., 29 U.S.P.Q.2d 1783, 1785 (T.T.A.B. 1993). Rather, the Examining Attorney has instead cited to Internet "evidence" allegedly showing that the Registrant's goods are commonly used with the type of services offered by the Applicant. A close inspection of this evidence shows that they actually cover goods that are distinctly different than the Registrant's goods. Thus, the cited evidence is insufficient to prove that the Applicant's services and the Registrant's goods are related in the minds of consumers, especially where the cited evidence does not identify exactly the same goods as covered by the Registration. Further, the Examining Attorney has not provided any evidence that consumers would perceive the Applicant's services and the Registrant's goods as emanating from the same source.

Again, the Registrant only offers video game controllers and not video or computer games, nor computer game controllers or controllers used with computer online games. See Exhibit B in prior response. The controllers cited to by the Examining Attorney are all for use only with online gaming. They are not controllers that can be used in any way with any video game console. Further, there has been no evidence cited that would support the conclusion that video game controllers can be used with computer games or online gaming or that video game controllers would be considered synonymous with online gaming controllers. Thus, the cited evidence is inapposite to the present case.

The Applicant's services are being offered in connection with computer games and online gaming and, thus, target consumers who are savvy in gaming and entertainment. The Registrant's mark is solely for video game console controllers, not online or computer gaming. As such, the Applicant's mark is being used in connection with services directed to a specific category of consumers. In addition, the consumers that are targeted by the Applicant will likely seek more advanced and interactive services as compared to those targeted by the Registration. The Registrant's goods and the Applicant's services are not related, nor are they marketed in such a way that they could be encountered by consumers who would mistakenly assume that they shared the same source. As such, the Applicant's services and the Registrant's goods are directed to different target markets and/or trade channels.

The Applicant submits that even if the same consumers were to encounter both the Applicant's marks and the cited mark, they would not be confused due to their sophistication. Sophisticated consumers generally exercise greater care in their field of expertise and are less likely to be confused. See Toro Co. v. ToroHead Inc., 61 U.S.P.Q.2d 1164 (T.T.A.B. 2001) (sophistication of both parties' purchases and lack of impulse purchases for product types factors against likelihood of confusion); Hewlettâ€'Packard Co. v. Human Performance Measurement Inc., 23 U.S.P.Q.2d 1390 (T.T.A.B. 1990) (noting education level of buyers as relevant to their sophistication). Video gamers that might use the Registrant's video game controller, are highly sophisticated consumers, often spending more that $50 per game, at least $50 for accessories such as controllers, and often over $200 for a video game console system. Purchasers of the Registrant's goods make such purchases infrequently and usually with great deliberation, as they need to make sure that the goods they invest in will be compatible over the long term with their video game console, which is also bought normally after great consideration and deliberation, given that buying one type of console and the corresponding controllers can and will naturally limit the array of compatible games that can be purchased and played on the purchased system. As a result, these consumers have to be knowledgeable and sophisticated in the technology that the goods relate to in order to make well-informed, prudent purchasing decisions.

The Applicant's online gaming consumers are likewise sophisticated. Online gaming consumers must own a personal computer or a mobile internet device, such as a smart phone or tablet computer, to play the online games. These personal computers and mobile internet devices cost several hundred dollars and, in some cases, thousands of dollars. The consumer must also have access to the Internet, typically through a subscription or annual plan, and then generally pay a subscription fee and/or other fees to play the online games. Thus, the Applicant's consumers are more sophisticated than average consumers because their computing habits require them to be technologically savvy and sophisticated, so that they can make wise decisions in expending significant sums of money to purchase their computing platforms, internet access plans and desired online games. Accordingly, the Applicant's mark is used in connection with services that cater to these knowledgeable and sophisticated consumers. See Nina Ricci S.A.R.L. v. E.T.F. Enterprises Inc., 9 USPQ2d

1061, 1064 (TTAB 1998)(customers that were "fashion conscious, high income and quite sophisticated" were not likely to be confused by same surname of mark on clothing).

C. There Is No Likelihood Of Confusion Because The Marks Differ In Appearance, Sound And Commercial Impression

The Applicant specifically incorporates by reference herein all of its arguments presented in the prior response regarding the difference of the Applicant's and Registrant's marks in appearance, sound and commercial appearance.

Further, as stated in the prior response, the Registration (KAMA) and the Applicant's mark (KG KAMA GAMES & Design) are visably different to consumers. See Entrepreneur Media v. Smith, 279 F.3d 1135, 1145 (9th Cir. 2002) (ENTREPRENEUR and ENTREPRENEUR ILLUSTRATED both for magazines dissimilar, as the latter is twice as long to both the eye ear), citing Gruner + Jahr USA Pub. v. Meredith Corp., 991 F.2d 1072, 1078 (2nd Cir. 1992) (PARENT'S DIGEST not similar to PARENTS both for magazines, despite the similar use of the term PARENT), and McGraw-Hill Pub. Co. v. American Aviation Associates, 117 F.2d 293, 295 (Ct. App. D.C. 1940) (no confusion likely between AMERICAN AVIATION and AVIATION, relying in part on the fact that the former "is composed of two words"). Hence, the target consumers would be unlikely to confuse Applicant's mark with the cited mark.

In addition, to remedy the deficiency raised by the Examiner in the Applicant's prior submission, the Applicant submits herewith as Exhibits A, B and C, the actual printouts of the cited registrations for KAMA formative marks in International Class 9 from the USPTO's database.

D. Conclusion

In view of the above and additionally considering the limiting amendment to Applicant's identification of services, Applicant submits that there is no likelihood of confusion between Applicant's mark and the cited mark, and respectfully requests that the Examining Attorney withdraw the refusal to register under Section 2(d) and approve the application for publication. If the Examining Attorney requires any additional information, please do not hesitate to call or write the undersigned.

II. Identification of Services

To further distinguish Applicant's mark from the cited registration, the Applicant has amended its identification of services as indicated in this request for reconsideration.

EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_20422723338-195215381_._Exhibit_A_-_Reg._No._3968653_KAMAG.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT16\IMAGEOUT16\853\789\85378952\xml1\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\853\789\85378952\xml1\RFR0003.JPG

	\\TICRS\EXPORT16\IMAGEOUT16\853\789\85378952\xml1\RFR0004.JPG
ORIGINAL PDF FILE	evi_20422723338-195215381_._Exhibit_B_-_Reg._No._1805931_KAMAYA.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\853\789\85378952\xml1\RFR0005.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\853\789\85378952\xml1\RFR0006.JPG
ORIGINAL PDF FILE	evi_20422723338-195215381_._Exhibit_C_-_Reg._No._4122605_KAMAI.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\853\789\85378952\xml1\RFR0007.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\853\789\85378952\xml1\RFR0008.JPG
DESCRIPTION OF EVIDENCE FILE	electronic copies of certificates of registration for KAMA formative marks registered in International Class 9

GOODS AND/OR SERVICES SECTION (current)

INTERNATIONAL CLASS	041

DESCRIPTION

Entertainment services, namely, providing online computer and electronic games; Entertainment services, namely, providing on-line computer games, enhancements within online computer games, and game applications within online computer games; providing online reviews of computer games, and providing of information relating to computer games; providing an Internet website portal in the field of computer games and gaming; Entertainment services, namely, providing virtual environments in which users can interact through social games for recreational, leisure or entertainment purposes

FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 05/27/2010
FIRST USE IN COMMERCE DATE	At least as early as 05/27/2010

GOODS AND/OR SERVICES SECTION (proposed)

INTERNATIONAL CLASS	041

TRACKED TEXT DESCRIPTION

~~Entertainment services, namely, providing online computer and electronic games~~; Entertainment services all featuring online gaming, namely, providing online computer and electronic games; Entertainment services, namely, providing on-line computer games, enhancements within online computer games, and game applications within online computer games; providing online reviews of computer games, and providing of information relating to computer games; providing an Internet website portal in the field of computer games and gaming; Entertainment services, namely, providing

virtual environments in which users can interact through social games for recreational, leisure or entertainment purposes
FINAL DESCRIPTION
Entertainment services all featuring online gaming, namely, providing online computer and electronic games; Entertainment services, namely, providing on-line computer games, enhancements within online computer games, and game applications within online computer games; providing online reviews of computer games, and providing of information relating to computer games; providing an Internet website portal in the field of computer games and gaming; Entertainment services, namely, providing virtual environments in which users can interact through social games for recreational, leisure or entertainment purposes

FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 05/27/2010
FIRST USE IN COMMERCE DATE	At least as early as 05/27/2010
CORRESPONDENCE SECTION	
ORIGINAL ADDRESS	JENNA F. LEAVITT PILLSBURY WINTHROP SHAW PITTMAN LLP 1540 BROADWAY NEW YORK New York (NY) US 10036
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COMMUNICATION	Yes
SIGNATURE SECTION	
RESPONSE SIGNATURE	/JennaLeavitt/
SIGNATORY'S NAME	Jenna Leavitt
SIGNATORY'S POSITION	Attorney of Record, Member of the Arizona, California and Nevada Bars
SIGNATORY'S PHONE NUMBER	(212) 858-1997
DATE SIGNED	07/20/2012
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Fri Jul 20 20:03:19 EDT 2012
TEAS STAMP	USPTO/RFR-204.227.233.38-20120720200319889578-85378952-490d575962ad24b27ab5cc929122b727b-N/A-N/A-20120720195215381547

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **85378952** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

In response to the Final Office Action dated January 20, 2012, please consider the following remarks in support of registration.

I. **Likelihood of Confusion**

A. There Is No Likelihood Of Confusion Because The Goods/Services Are Different

When considering whether a likelihood of confusion exists, the Examining Attorney is limited to determining relatedness in respect to the goods/services as identified in the registration. See United Drug v. Rectanus, 248 U.S. 90, 97 (Sup. Ct. 1918); University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 217 U.S.P.Q. 505, 507 (Fed. Cir. 1983) holding that "rights in gross . . . is contrary to principles of Trademark law." Thus, this general Trademark principle grants a Trademark owner protection only in relation to the identified goods. The Registrant's goods are limited solely to "video game controllers." The Applicant's services are limited to online gaming and related services, and not video games, let alone hardware components for a video game console system. The Applicant maintains its position that the present services are not similar to the goods of the Registrant.

The Examining Attorney stated in the Final Office Action on page 3 that Applicant relies "on limitations not present in the identifications to differentiate the goods and services." As such, the Applicant has amended the description of services to clarify that the services are all related to online gaming and not video game console accessories or games. In view of the amendment, the Applicant respectfully submits that it may properly rely on the arguments. Instead of repeating those arguments in this response, the Applicant incorporates those arguments herein by this reference.

Rather than semantic generalization of the products, it is consumer perception that is significant for determining product relatedness. See, e.g., Electronic Data Systems Corp. v. EDSA Micro Corp., 23 U.S.P.Q.2d 1460, 1463 (T.T.A.B. 1992) ("[T]he issue of whether or not two products are related does not revolve around the question of whether a term can be used that describes them both, or whether both can be classified under the same general category"); UMC Industries, Inc. v. UMC Electronics Co., 207 U.S.P.Q. 861, 879 (T.T.A.B. 1980) ("the fact that one term, such as 'electronic,' may be found which generally describes the goods of both parties is manifestly insufficient to establish that the goods are related in any meaningful way"); Harvey Hubbell, Inc. v. Tokyo Seimitsu Co., 188 U.S.P.Q. 517, 520 (T.T.A.B. 1975) ("In determining whether products are identical or similar, the inquiry should be whether they appeal to the same market, not whether they resemble each other physically or whether a word can be found to describe the goods of the parties").

The fact that the Applicant's services and the Registrant's product can be categorized in the same broad "field" involving gaming does not, of itself, provide a basis for regarding the products or services as "related." See In re Digirad Corp., 45 U.S.P.Q.2d 1841 (Comr Pats 1998) (holding that despite some industry "overlap," DIGIRAY and DIGIRAD are not confusingly similar for highâ€'tech medical diagnostic apparatus used to different endsÇooper Industries, Inc. v. Repcoparts USA, Inc., 218 USPQ 81, 84 (T.T.A.B. 1983) ("the mere fact that the products involved in this case (or any products with significant differences in character) are sold in the same industry does not of itself provide an adequate basis to find the required 'relatedness' ").

When a cited registration describes goods broadly, such as without limitation as to the specific nature or type, the Examining Attorney may presume that the goods encompass a broad spectrum. See In re Thor Tech., Inc., 90 U.S.P.Q.2d 1634, 1638 (T.T.A.B. 2009). However, the Registrant has claimed a very narrow set of goods – video game controllers.

Here, the Applicant uses the mark for its online computer games and gaming, while the Registrant has registered its mark solely for video game controllers. As set forth in the prior

response, the Registrant uses its mark solely for video game controllers only in connection with *Wii* console devices as evidenced by Exhibits A and B in the prior response. Registrant's website demonstrates that its video game controller is for use with solely with Nintendo's *Wii* video game console and in place of Nintendo's regular "Nunchuk" controller (although incompatible with a few Nunchuk capable video games). See http://www.nyko.com/customer-support/product-support.html?platform=Wii&name=Kama. While the Registrant's goods are claimed only with respect to video games, the Applicant's services do not involve video games, video game consoles or any accessories related thereto.

A video game is distinguishable from computer games and even more so from online computer games. Simply because they can be argued to be related to the same general industry of gaming does not provide that such goods/services are similar for the likelihood of confusion analysis. See, e.g., In re Digirad Corp., 45 U.S.P.Q.2d 1841; Cooper Industries, Inc., 218 U.S.P.Q. at 84. Computer games require different equipment with different connectivity than those required by video games. Computer games, especially online computer games, also provide a much different array of features and functions than those provided by video games. With the growing popularity of the Internet and related tools, such as Bluetooth, computer games now provide an entirely different world of interactivity than that which can be achieved through video games. This difference between video games and related accessories and computer online games is supported by consumer perception. See, e.g., Electronic Data Systems Corp., 23 USPQ2d at 1463; see also Exhibit D in prior response.

Even where the marks are identical, which is not the case here, and the products or services can be marketed to the same customers, which is also not the case, sufficient differences between the products or services negate a likelihood of confusion. Local Trademarks Inc. v. The Handy Boys Inc., 16 U.S.P.Q.2d 1156 (T.T.A.B. 1990) (holding no confusion between LITTLE PLUMBER for liquid drain opener and identical mark LITTLE PLUMBER for advertising services though both products were marketed to plumbing contractors). For example, in McGraw-Hill Inc. v. Comstock Partners Inc., 743 F.Supp. 1029, 1034 (S.D.N.Y. 1990), COMSTOCK for computer network for providing "real time" stock quotes was held not likely to be confused with COMSTOCK for money management of large investment portfolios, and the mere fact that the products sold under both marks were "related to the broad field of finance" was held insufficient to demonstrate that the products are related.

As evident from the description of services, Applicant's services focus on gaming and the online environment to serve a much different purpose and consumer than the goods of the cited mark. Thus, the cited mark is used in connection with goods that have significant differences in character than the services of the Applicant's mark, and do not provide an adequate basis to find the required 'relatedness.'

In view of the above, the marks are directed to the Registrant's goods and the Applicant's services that are sufficiently different to avoid a likelihood of confusion.

B. There Is No Likelihood Of Confusion Because the Registrant's Goods and the Applicant's Services Are Directed to Different Target Markets/Trade Channels And Because the Consumers Are Sophisticated

In analyzing likelihood of confusion, the relevant confusion must be in the minds of the purchasers or potential purchasers of the parties' products. Electronic Design & Sales, Inc. v. Electronic Data Sys. Corp., 21 U.S.P.Q.2d 1388, 1390 (Fed. Cir. 1992). "The ultimate inquiry, regardless of the nature of the involved marks, is whether "relevant persons" are likely to be confused." In re Code Consultants Inc., 60 U.S.P.Q.2d 1699 (T.T.A.B. 2001). As discussed

above, the difference between video games and their controllers on the one hand and computer online games on the other is supported by consumer perception. See, e.g., Electronic Data Systems Corp., 23 USPQ2d at 1463; see also Exhibit D in prior response.

Not only are the Registrant's goods and the Applicant's services unrelated, the evidence of record clearly demonstrates that the Registrant's goods and the Applicant's services are offered in different channels of trade. The Registrant's goods are specifically limited to video game controllers. This reflects a highly specialized product that is sold in limited channels of trade to a very limited type of consumer (video game console owner or user). This highly specialized product is exceedingly different than the services offered by the Applicant.

While copies of use-based, third party registrations can be used to suggest that goods and/or services are of a certain type which may originate from a single source, the Examining Attorney has not provided any such third party, use-based registrations. In re Albert Trostel & Sons Co., 29 U.S.P.Q.2d 1783, 1785 (T.T.A.B. 1993). Rather, the Examining Attorney has instead cited to Internet "evidence" allegedly showing that the Registrant's goods are commonly used with the type of services offered by the Applicant. A close inspection of this evidence shows that they actually cover goods that are distinctly different than the Registrant's goods. Thus, the cited evidence is insufficient to prove that the Applicant's services and the Registrant's goods are related in the minds of consumers, especially where the cited evidence does not identify exactly the same goods as covered by the Registration. Further, the Examining Attorney has not provided any evidence that consumers would perceive the Applicant's services and the Registrant's goods as emanating from the same source.

Again, the Registrant only offers video game controllers and not video or computer games, nor computer game controllers or controllers used with computer online games. See Exhibit B in prior response. The controllers cited to by the Examining Attorney are all for use only with online gaming. They are not controllers that can be used in any way with any video game console. Further, there has been no evidence cited that would support the conclusion that video game controllers can be used with computer games or online gaming or that video game controllers would be considered synonymous with online gaming controllers. Thus, the cited evidence is inapposite to the present case.

The Applicant's services are being offered in connection with computer games and online gaming and, thus, target consumers who are savvy in gaming and entertainment. The Registrant's mark is solely for video game console controllers, not online or computer gaming. As such, the Applicant's mark is being used in connection with services directed to a specific category of consumers. In addition, the consumers that are targeted by the Applicant will likely seek more advanced and interactive services as compared to those targeted by the Registration. The Registrant's goods and the Applicant's services are not related, nor are they marketed in such a way that they could be encountered by consumers who would mistakenly assume that they shared the same source. As such, the Applicant's services and the Registrant's goods are directed to different target markets and/or trade channels.

The Applicant submits that even if the same consumers were to encounter both the Applicant's marks and the cited mark, they would not be confused due to their sophistication. Sophisticated consumers generally exercise greater care in their field of expertise and are less likely to be confused. See Toro Co. v. ToroHead Inc., 61 U.S.P.Q.2d 1164 (T.T.A.B. 2001) (sophistication of both parties' purchases and lack of impulse purchases for product types factors against likelihood of confusion); Hewlettâ€'Packard Co. v. Human Performance Measurement Inc., 23 U.S.P.Q.2d 1390 (T.T.A.B. 1990) (noting education level of buyers as relevant to their sophistication). Video gamers that might use the Registrant's video game controller, are highly sophisticated consumers, often spending more that $50 per game, at least

$50 for accessories such as controllers, and often over $200 for a video game console system. Purchasers of the Registrant's goods make such purchases infrequently and usually with great deliberation, as they need to make sure that the goods they invest in will be compatible over the long term with their video game console, which is also bought normally after great consideration and deliberation, given that buying one type of console and the corresponding controllers can and will naturally limit the array of compatible games that can be purchased and played on the purchased system. As a result, these consumers have to be knowledgeable and sophisticated in the technology that the goods relate to in order to make well-informed, prudent purchasing decisions.

The Applicant's online gaming consumers are likewise sophisticated. Online gaming consumers must own a personal computer or a mobile internet device, such as a smart phone or tablet computer, to play the online games. These personal computers and mobile internet devices cost several hundred dollars and, in some cases, thousands of dollars. The consumer must also have access to the Internet, typically through a subscription or annual plan, and then generally pay a subscription fee and/or other fees to play the online games. Thus, the Applicant's consumers are more sophisticated than average consumers because their computing habits require them to be technologically savvy and sophisticated, so that they can make wise decisions in expending significant sums of money to purchase their computing platforms, internet access plans and desired online games. Accordingly, the Applicant's mark is used in connection with services that cater to these knowledgeable and sophisticated consumers. See Nina Ricci S.A.R.L. v. E.T.F. Enterprises Inc., 9 USPQ2d 1061, 1064 (TTAB 1998)(customers that were "fashion conscious, high income and quite sophisticated" were not likely to be confused by same surname of mark on clothing).

C. There Is No Likelihood Of Confusion Because The Marks Differ In Appearance, Sound And Commercial Impression

The Applicant specifically incorporates by reference herein all of its arguments presented in the prior response regarding the difference of the Applicant's and Registrant's marks in appearance, sound and commercial appearance.

Further, as stated in the prior response, the Registration (KAMA) and the Applicant's mark (KG KAMA GAMES & Design) are visably different to consumers. See Entrepreneur Media v. Smith, 279 F.3d 1135, 1145 (9th Cir. 2002) (ENTREPRENEUR and ENTREPRENEUR ILLUSTRATED both for magazines dissimilar, as the latter is twice as long to both the eye ear), citing Gruner + Jahr USA Pub. v. Meredith Corp., 991 F.2d 1072, 1078 (2nd Cir. 1992) (PARENT'S DIGEST not similar to PARENTS both for magazines, despite the similar use of the term PARENT), and McGraw-Hill Pub. Co. v. American Aviation Associates, 117 F.2d 293, 295 (Ct. App. D.C. 1940) (no confusion likely between AMERICAN AVIATION and AVIATION, relying in part on the fact that the former "is composed of two words"). Hence, the target consumers would be unlikely to confuse Applicant's mark with the cited mark.

In addition, to remedy the deficiency raised by the Examiner in the Applicant's prior submission, the Applicant submits herewith as Exhibits A, B and C, the actual printouts of the cited registrations for KAMA formative marks in International Class 9 from the USPTO's database.

D. Conclusion

In view of the above and additionally considering the limiting amendment to Applicant's identification of services, Applicant submits that there is no likelihood of confusion between

Applicant's mark and the cited mark, and respectfully requests that the Examining Attorney withdraw the refusal to register under Section 2(d) and approve the application for publication. If the Examining Attorney requires any additional information, please do not hesitate to call or write the undersigned.

II. Identification of Services

To further distinguish Applicant's mark from the cited registration, the Applicant has amended its identification of services as indicated in this request for reconsideration.

EVIDENCE

Evidence in the nature of electronic copies of certificates of registration for KAMA formative marks registered in International Class 9 has been attached.

Original PDF file:

evi_20422723338-195215381_.Exhibit_A_-_Reg._No._3968653_KAMAG.pdf

Converted PDF file(s) (3 pages)

Evidence-1

Evidence-2

Evidence-3

Original PDF file:

evi_20422723338-195215381_.Exhibit_B_-_Reg._No._1805931_KAMAYA.pdf

Converted PDF file(s) (2 pages)

Evidence-1

Evidence-2

Original PDF file:

evi_20422723338-195215381_.Exhibit_C_-_Reg._No._4122605_KAMAI.pdf

Converted PDF file(s) (2 pages)

Evidence-1

Evidence-2

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 041 for Entertainment services, namely, providing online computer and electronic games; Entertainment services, namely, providing on-line computer games, enhancements within online computer games, and game applications within online computer games; providing online reviews of computer games, and providing of information relating to computer games; providing an Internet website portal in the field of computer games and gaming; Entertainment services, namely, providing virtual environments in which users can interact through social games for recreational, leisure or entertainment purposes

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 05/27/2010 and first used in commerce at least as early as 05/27/2010, and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~Entertainment services, namely, providing online computer and electronic games~~; Entertainment services all featuring online gaming, namely, providing online computer and electronic games; Entertainment services, namely, providing on-line computer games, enhancements within online computer games, and game applications within online computer games; providing online reviews of computer games, and providing of information relating to computer games; providing an Internet website portal in the field of computer games and gaming; Entertainment services, namely, providing virtual environments in which users can interact through social games for recreational, leisure or entertainment purposes

Class 041 for Entertainment services all featuring online gaming, namely, providing online computer and electronic games; Entertainment services, namely, providing on-line computer games, enhancements within online computer games, and game applications within online computer games; providing online reviews of computer games, and providing of information relating to computer games; providing an Internet website portal in the field of computer games and gaming; Entertainment services, namely, providing virtual environments in which users can interact through social games for recreational, leisure or entertainment purposes

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 05/27/2010 and first used in commerce at least as early as 05/27/2010, and is now in use in such commerce.

CORRESPONDENCE ADDRESS CHANGE

Applicant proposes to amend the following:

Current:

JENNA F. LEAVITT
PILLSBURY WINTHROP SHAW PITTMAN LLP
1540 BROADWAY
NEW YORK
New York (NY)
US
10036

Proposed:

JENNA F. LEAVITT of PILLSBURY WINTHROP SHAW PITTMAN LLP, having an address of
1540 BROADWAY NEW YORK, New York 10036
United States
Docket_IP@pillsburylaw.com;jfk@pillsburylaw.com
212.858.1000
212.881.9337
The attorney docket/reference number is 034949.0406023.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /JennaLeavitt/ Date: 07/20/2012
Signatory's Name: Jenna Leavitt
Signatory's Position: Attorney of Record, Member of the Arizona, California and Nevada Bars

Signatory's Phone Number: (212) 858-1997

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Mailing Address: JENNA F. LEAVITT
PILLSBURY WINTHROP SHAW PITTMAN LLP
1540 BROADWAY
NEW YORK, New York 10036

Serial Number: 85378952
Internet Transmission Date: Fri Jul 20 20:03:19 EDT 2012
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122b727b-N/A-N/A-20120720195215381547

United States of America
United States Patent and Trademark Office

KAMAG

Reg. No. 3,968,653

Registered May 31, 2011

Corrected May 1, 2012

Int. Cls.: 7, 9 and 12

TRADEMARK

PRINCIPAL REGISTER

KAMAG TRANSPORTTECHNIK; GMBH & CO.KG (FED REP GERMANY PRIVATE LIMITED PARTNESHIP),
LISTRASSE 3
89079 ULMFED REP GERMANY

FOR: MACHINES FOR THE TRANSPORT AND HANDLING OF HEAVY AND BULKY LOADS, NAMELY, CRANES, CAR LIFTS; LIFTING AND ELEVATING APPARATUS, NAMELY, ELEVATING OR LIFTING WORK PLATFORMS, MECHANICAL AND HYDRAULIC LIFTS, CRANES, CAR LIFTS; BELTS, CHAINS AND HYDRAULIC CONVEYERS; POWER DRIVEN TRANSPORT DEVICES AND APPARATUS, NAMELY, ELEVATING OR LIFTING WORK PLATFORMS, MECHANICAL AND HYDRAULIC LIFTS, CRANES, CAR LIFTS, * EXCEPT SCREWS, NUTS BOLTS, SLICES AND RIVETS *, IN CLASS 7 (U.S. CLS. 13, 19, 21, 23, 31, 34 AND 35). .

FOR: DISPLAYING, MONITORING, CONTROLLING AND REGULATING APPARATUS FOR VEHICLES, NAMELY, INDICATORS FOR SPEED AND LEVEL; DISPLAYING, MONITORING, CONTROLLING AND REGULATING APPARATUS FOR CRANES, LIFTING AND ELEVATING APPARATUS AND CONVEYERS, NAMELY, CONTROL SYSTEMS FOR THE REMOTE OBSERVATION, MANAGEMENT, OPERATION OF CRANES AND LIFTS, COMPRISED OF COMPUTERS, SOFTWARE, ELECTRONIC AND ELECTROMECHANICAL CONTROLS AND SENSORS; DATA PROCESSING EQUIPMENT AND COMPUTERS; OPERATING PROGRAMS FOR DATA PROCESSING EQUIPMENT, COMPUTERS, * EXCEPT SCREWS, NUTS BOLTS, SLICES AND RIVETS *, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38). .

FOR: MOTORS AND ENGINES FOR LAND VEHICLES; TRANSMISSION COMPONENTS FOR LAND VEHICLES, NAMELY, TRAILER COUPLINGS, AND TRANSMISSION CHAINS; VEHICLES AND APPARATUS FOR THE TRANSPORT OF HEAVY AND BULKY LOADS, NAMELY, MOTOR CARS, TRUCKS, REMOTELY CONTROLLED LAND VEHICLES AND ROBOTIC TRANSPORT VEHICLES; SEMI TRAILER TRANSPORTERS, NAMELY, SEMITRACTOR TRAILERS; STACKER LAND VEHICLES; TRUCKS FOR TRANSPORTING RAILWAY CARS; TRUCKS FEATURING ELEVATING TRANSPORTERS, TRUCKS FOR TRANSPORTING SHIP SECTIONS, CONTAINERS AND BULKY LOADS; TRACTORS AND TRAILERS FOR THE AFOREMENTIONED VEHICLES AND MACHINES; TRACTORS; SEMI TRAILER TRACTORS; LAND TRANSPORT VEHICLES FOR TRANSPORTING GAS TANKS; LAND TRANSPORT VEHICLES FOR TRANSPORTING GLASS; LAND TRANSPORT VEHICLES FEATURING TOOL CHANGERS; VEHICLES, MACHINES AND APPARATUS FOR ROAD TRANSPORT, NAMELY, CARS AND TRUCKS USED FOR ROAD TRANSPORT

David J. Kappos

Director of the United States Patent and Trademark Office

Reg. No. 3,968,653 ON LAND; VEHICLES, MACHINES AND APPARATUS FOR AVIATION, ASTRONAUTICS, AND AEROSPACE INDUSTRY, NAMELY, AIRCRAFT TRACTORS BEING TRACTORS FOR TRANSPORTING AIRCRAFTS AND SPACE SHUTTLE TRANSPORTERS, NAMELY, LAND VEHICLES FOR TRANSPORTING SPACE SHUTTLES; TRANSPORT; LORRIES; TRAILERS; HEAVY-LOAD TRAILERS, * EXCEPT SCREWS, NUTS BOLTS, SLICES AND RIVETS *, IN CLASS 12 (U.S. CLS. 19, 21, 23, 31, 35 AND 44). .

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

PRIORITY DATE OF 5-21-2008 IS CLAIMED.

OWNER OF INTERNATIONAL REGISTRATION 1012717 DATED 11-21-2008.

OWNER OF U.S. REG. NO. 2,551,526.

SER. NO. 79-072,714, FILED 11-21-2008.

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* *See* 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements.

*ATTENTION MADRID PROTOCOL REGISTRANTS: The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

Int. Cl.: 9

Prior U.S. Cl.: 21

Reg. No. 1,805,931

United States Patent and Trademark Office Registered Nov. 23, 1993

TRADEMARK
PRINCIPAL REGISTER

KAMAYA

KAMAYA ELECTRIC CO., LTD. (JAPAN CORPORATION)
3515 KAMIWADA
YAMATO-SHI, KANAGAWA-KEN, JAPAN

FOR: RESISTORS, IN CLASS 9 (U.S. CL. 21).

FIRST USE 10-1-1957; IN COMMERCE 2-1-1958.

SER. NO. 74-369,407, FILED 3-17-1993.

J. TINGLEY, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cl.: 21

Reg. No. 1,805,931

United States Patent and Trademark Office

Registered Nov. 23, 1993

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FIRST USE 10-1-1957; IN COMMERCE 2-1-1958.

SER. NO. 74-369,407, FILED 3-17-1993.

J. TINGLEY, EXAMINING ATTORNEY

United States of America
United States Patent and Trademark Office

KAMAI

Reg. No. 4,122,605

Registered Apr. 3, 2012

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

ENTONE, INC. (DELAWARE CORPORATION)
20863 STEVENS CREEK BLVD., SUITE 300
CUPERTINO, CA 95014

FOR: COMPUTER HARDWARE AND SOFTWARE FOR THE INTEGRATION OF TEXT, AUDIO, GRAPHICS, STILL IMAGES AND MOVING PICTURES INTO AN INTERACTIVE DELIVERY FOR MULTIMEDIA APPLICATIONS OVER DIGITAL BROADBAND NETWORKS FOR INTEGRATION WITH BROADCAST TELEVISION CHANNELS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-1-2011; IN COMMERCE 1-1-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

THE TERM "KAMAI" REFERS TO HIMALAYAN PEOPLE WHO ARE ARYAN IN ORIGIN

SN 85-164,181, FILED 10-28-2010.

RUSS HERMAN, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

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NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.